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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,608	07/29/2003	Anthony F. Whitemiller		5825

23121 7590 05/10/2006

THE LAW FIRM OF HARRIS & BURDICK  
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SUITE E  
BOULDER, CO 80301

EXAMINER
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PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/628,608

Applicant(s)

WHITEMILLER ET AL.

Examiner

Jason Prone

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-20 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Appendix A.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knoop (4,805,304) in view of Goldwitz (4,993,093). See Appendix A at the end of this Office action for examiner added reference numerals. In regards to claim 1, Knoop discloses the invention including a tool with a mount having a handle portion (11) and a head portion (700), the head portion is enlarged in at least one dimension relative to the handle portion and characterized by a surface area progressively angularly diverging from the handle portion (700), a path defined at the handle portion terminating at an opening at the head portion (Figs. 1 and 2), and a knife blade shuttle selectively movable along the path defined at the mount (17).

In regards to claim 5, Knoop discloses the mount includes first and second housing portions (Fig. 6).

However, Knoop fails to disclose a tape measure blade receiving slot being located through the surface area of the head portion, the slot and the path are oriented relative to one another in a substantially coplanar relationship, the housing portion define the slot at one part of each of the first and second housing portions, and the first

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and second housing portions having means at one parts for resiliently gripping a tape measure blade.

Goldwitz teaches a tape measure blade receiving slot being located through the surface area of the head portion (30), the slot and the path are oriented relative to one another in a substantially coplanar relationship (Fig. 2), the housing portion define the slot at one part of each of the first and second housing portions (31 and 32), and the first and second housing portions having means at one parts for resiliently gripping a tape measure blade (Fig. 4). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Knoop with a tape measure blade receiving slot, as taught by Goldwitz, to allow for the user to cut more precisely.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knoop in view of Goldwitz as applied to claim 1 above, and further in view of Thomas III (D238,247). Knoop in view of Goldwitz disclose the invention but fail to disclose the surface area of the head portion is expansive relative to a width of the handle portion. Thomas III teaches an angularly diverging head portion with a surface area that is expansive to the width of the handle portion (Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Knoop in view of Goldwitz with an expansive head portion, as taught by Thomas III, to allow the knife to fully support a broader finger.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knoop in view of Goldwitz further in view of Thomas III as applied to claims 1 and 2 above, and further in view of Black et al. (D386,381). Knoop in view of Goldwitz further in view of

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Thomas III disclose the invention including the surface area is curvilinear (700 in Knoop).

However, Knoop in view of Goldwitz further in view of Thomas III fail to disclose surface irregularities.

Black et al. teaches surface irregularities (Figs. 6-9). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Knoop in view of Goldwitz further in view of Thomas III with surface irregularities, as taught by Black et al., to allow for the user to gain a better grip on a portion of the apparatus requiring the users fingers.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knoop in view of Goldwitz as applied to claim 1 above, and further in view of Huang (US 2002/0124411). Knoop in view of Goldwitz disclose the invention including the shuttle includes a blade holding portion (24 in Knoop) and a manipulable porting extending away from the blade holding potion and accessible at the mount at a position spaced from the head portion (48).

However, Knoop in view of Goldwitz fail to disclose a lock-out means in the mount and cooperative with the manipulable portion for prohibiting movement of the shuttle in a preselected circumstance.

Huang teaches a lock-out means in the mount (151) and cooperative with the manipulable portion (322) for prohibiting movement of the shuttle in a preselected circumstance (Page 2, lines 7-9 of paragraph [0023]). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided

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Knoop in view of Goldwitz with a lock-out means, as taught by Huang, to prevent the blade from moving to the extended/working position at an unwanted time.

***Allowable Subject Matter***

6. Claims 7-20 are allowed. Claims 7 and 14 are allowable for the reasons stated in the previous Office action.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berns, Huang ('062), Davis, Arend et al., Van Deursen ('767), Falt, Hsu ('778), and Horton.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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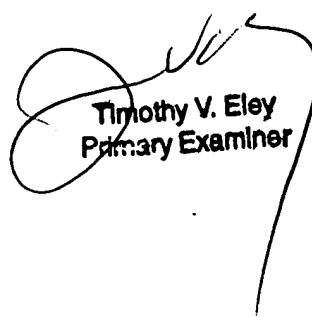
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JP  
April 28, 2006

  
Timothy V. Eley  
Primary Examiner

**Appendix A**

